

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.561 of 2015

Arising Out of PS.Case No. -79 Year- 2010 Thana -JAMHORA District- AURANGABAD

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1. Gopal Prajapati Son of Yugal Prasad Prajapati
 2. Shankardayal Prajapati Son of Gopal Prajapati resident of village - Rampur,
P.S. Jamhor, District - Aurangabad

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Dr. Leelawati Kumari, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 09-08-2018

Appellants, namely, Gopal Prajapati and Shankardayal Prajapati have been found guilty for an offence punishable under Sections 307/34 IPC and sentenced to undergo RI for four years as well as to pay fine of Rs. 2000/- in default thereof, to undergo SI for one month vide judgment of conviction dated 04.08.2015 and order of sentence dated 06.08.2015 passed by Sessions Judge, Aurangabad in Sessions Trial No. 159/2011.

2. Suresh Singh (PW 5) filed a written report on 29.08.2010 disclosing therein that on the same day at about 1.30 PM while he was returning from his field after offering breakfast to the labourers and as soon as reached near Durga Asthan, his co-villagers, Gopal Parajapati and Shankardayal Prajapati armed with Garasa, Lathi attacked and during course thereof, Shankar gave Garasa blow



over his head causing injury thereupon while Gopal snatched away golden chain, cash appertaining to Rs. 2000/-. Then thereafter, both of them assaulted with Lathi indiscriminately. The motive for the occurrence has been shown as both the accused persons were engaged in provoking the labourers not to work in his field.

3. After registration of Jamhore PS Case No. 79/2010, investigation was taken up and after concluding the same, charge-sheet was submitted which happens to be the basis of trial meeting with ultimate result, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. Furthermore, it has been pleaded that informant intruded inside the house of Gopal Prajapati in order to outrage the modesty of his wife and during course thereof, he got struck with the wooden frame of the door and sustained injury. However, nothing has been adduced on behalf of defence in support thereof.

5. In order to substantiate its case, prosecution had examined altogether 8 PWs who are PW-1, Vijay Singh, PW-2, Raj Karan Singh, PW-3 Awadhesh Singh, PW-4, Akhilesh Singh, PW-5, Suresh Singh, PW-6, Dr. Rambhajan Choudhary, PW-7, Gumadi Gagrai and PW-8, Nandlal Singh as well as had also exhibited written



report as Ext-1, injury report/supplementary injury report as Ext-2 series, Formal FIR as Ext-3 and endorsement over written report as Ext-4. As stated above, nothing has been adduced on behalf of defence.

6. While assailing the judgment of conviction and sentence, it has been submitted on behalf of learned counsel for the appellants that finding so recorded by the learned lower court happens to be unsustainable in the eye of law in the background of the fact that (a) the Investigating Officer had not found any supportive link while recording objective finding relating to the place of occurrence, (b) from the evidence of Investigating Officer, it is apparent that none of the persons of the surrounding has been examined, (c) the witnesses so examined are not at all consistent over the manner as well as genesis of occurrence, (d) the ocular as well as medical evidences are inconsistent to each other and (e) PW-4 had ruled out complicity of these appellants to be the author of the occurrence.

7. Apart from this, it has also been submitted that from the evidences available on the record though the prosecution case is not at all found duly substantiated but even then, if the court comes to a conclusion that the prosecution case is found substantiated to some extent, it would not be certainly under Section 307/34 of the IPC in the background of the fact that assault was not made with an intention



to commit murder nor blow was given having within the knowledge of the appellants that ultimate resultant of the blow would cost the life of the injured. In worst case, it simply happens to be an occurrence of assault and for that, appellant, Shankardayal Prajapati should be held guilty for an offence punishable under Section 324 IPC while Gopal Prajapati to be under Section 323 IPC. Furthermore, it has also been submitted that both the appellants were taken into custody on 30.08.2010 itself and were bailed out on 07.10.2010 and again had gone to custody on 04.08.2015 and were bailed out on 15.09.2015. So, the facts and circumstances of the case, the sentence be reduced to the period having been undergone.

8. Learned APP opposed the prayer and submitted that on the flimsy grounds informant was brutally assaulted and on account thereof, appellants need no sympathy. It has also been submitted that prosecution has succeeded in substantiating the charge whereupon, the finding recorded by the learned lower court is justified.

9. The written report has been filed by the informant (PW 5) on the alleged date i.e. on 29.08.2010 itself whereunder there happens to be specific discloser that he had sustained single Garasa blow having been inflicted at the end of Shankardayal and then thereafter, Shankardayal and Gopal, both hurled indiscriminate Lathi



blows.

10. Informant has been examined as PW-5 who had deposed that while he was returning from his field and reached at Durga Asthan, Shankardayal, Gopal attacked and during course thereof, Shankardayal assaulted with Garasa while Gopal with Lathi. Shankar had given blow over his head. He was taken to the police station and then to hospital. He had filed written report at the police station and exhibited. Identified the accused. During cross-examination at para-11, he had stated that the road near Durga Asthan happens to of soiling. As soon as he reached at Durga Mandap, accused persons attacked. He was assaulted from front side. After attacking, he fell down on account of injury sustained by him. He became unconscious. In para-12, he had stated that he was taken to the hospital. He regained sense after half an hour. He regained sense at a place where he had fallen. After regaining sense he found himself in a pool of blood. In para-15, he had stated that injury was tied with a towel. He had filed written report at 2.00 PM while his treatment began at Sadar hospital, Aurangabad from 3:00 PM. He remained at hospital for three days but he had got no document to support thereof. Then there happens to be suggestion that in drunken condition he had intruded inside the house of Gopal in order to ravish his wife and for that, the case has been instituted which is going on. It has further been



suggested that during course of aforesaid activity, he got struck with wooden frame of a door and sustained injury. Pendency of case has been admitted.

11. PW-6 is the doctor who had examined the injured/PW-5 on 29.08.2010 at 9:00 PM and found the following injuries:-

1. Incised wound on right side of head measuring 5"x ½"x bone deep caused by sharp cutting weapon and bleeding was seen and the edgeshape of injury regular clean cut everted margin.
2. Incised wound on occipital region measuring 3" x ½" x bone deep caused by sharp cutting weapon bleeding seen colour of blood red and everted margin.
3. Bruise on right palm measuring 3 ½" x 2" x 1" caused by hard blunt substance. Nature of injury was reserved and for that, additional injury report was issued (Ext-2/A) whereunder injury No.1 and 2 was found simple in nature while injury no.3 on account of fracture of upper end of first index finger of right palm, grievous in nature.

During cross-examination, it is evident that nothing substantial has been procured.

12. PW-1 had stated that on the alleged date and time of occurrence he was at Durga Asthan. Suresh and Gopal quarreled over weeding of crops. Gopal and Shankar gave Lathi and Garasa blow over head of Suresh as a result of which, there was cut. Family members of Suresh came and lifted him to hospital. During cross-



examination at para-3, he had admitted to be brother of informant. He had further admitted house of Gopal near Durga Asthan. He had also shown presence of others having houses in and around Durga Asthan. He had further stated that he is unable to say how many persons were staying at Durga Asthan at that very moment. In para-4, he had stated that Gopal, his wife and son are the labourers but they have not gone to weed out at the field of Suresh. Where they had gone, unable to say. Suresh had gone to inquire why they have not gone to weed in his field. He had gone to ask but what he said he had not heard. When sustained hurt, then had seen. Till then, Suresh became unconscious. He had fallen over the road through face side. He had gone to call his family members. In para-5, he had stated that copious blood spread over the place of occurrence. He had not gone to the hospital but others had gone. So, he is unable to say when he regained sense. Then had stated that Daroga Singh had disclosed that in the morning of following day, he regained sense. After regaining sense, this case has been instituted. In para-7, he had stated that police had seen the place of occurrence in his presence where he had shown blood, again corrected when police came, he was not present. Then had shown ignorance with regard to institution of case at the end of wife of Gopal. In para-10 and 11, there happens to be contradiction but that has gone worthless as attention of the Investigating Officer has not



been drawn.

13. PW-2 had stated that the informant happens to be his brother. On the alleged date and time of occurrence, he was also sitting at Durga Asthan, at that very time, Suresh was returning along with Lota and bucket from his field. During course thereof, he began to talk with Gopal. Shankar son of Gopal came armed with Garasa and struck over Suresh Singh. At that very time, Daroga Singh, Ramesh, Awadhesh, Dinesh brothers of informant came, took him to the village and then to hospital. During cross-examination at para-3, he had disclosed that accused persons were working under Suresh and even today they are working under Suresh. He had further stated that Suresh happens to be on visiting terms at the place of Gopal. In para-5 he had stated that he had not talked with anybody. Accused, after assault slipped inside their house. Suresh had fallen down. Copious blood spread over the ground. At para-7, he had admitted that during course of inspection of place of occurrence, the Investigating Officer had not found blood. At para-8, there happens to be contradiction but that had gone fruitless as attention of the Investigating Officer has not been drawn up. He had further admitted presence of case instituted by wife of Gopal but according to him was false.

14. PW-3 had stated that on the alleged date and time of occurrence he was going to his field. When he reached at Durga



Asthan, he had seen Gopal assaulting Suresh with Lathi while Shankar with Garasa. After sustaining injury, Gopal lied down whereupon they lifted him to the police station. During cross-examination, he had admitted to be full brother of informant. In para-4, he had admitted that at the time of occurrence he was going to his field. After hearing sound of uproar he along with other family members rushed to the place of occurrence where he found Suresh lying over road in a pool of blood. At para-5, he had admitted that he was unconscious. Blood was there. In para-6, he had stated that first of all they have taken Suresh to their house and then to Jamhore over tractor. He further stated that he is unable to say how many days he remained unconscious as he had not gone to the hospital. In para-7, he had stated that they reached at the police station at about 3:00 PM. Police immediately directed him to take the injured to the hospital. Suresh was unconscious at the police station. Then had shown ignorance with regard to institution of a case by the wife of Gopal. In para-10, there happens to be contradiction but again as attention has not been drawn to the Investigating Officer, remained useless.

15. PW-4 had deposed that neither he had seen the occurrence nor heard about it, again he had said that he had seen the occurrence. Gopal was engaged by him for the purpose of weeding on the alleged date and time of occurrence. Again corrected on the



alleged date Gopal and Shankar were returning from his field along with him after weeding. When they reached about the house of Gopal, they heard murmuring. Suresh was coming therefrom having injury over his person. During cross-examination, he had stated that he had seen Suresh coming out from the house of Gopal. He was in a drunken condition. He had not seen anybody engaged in assaulting him. So many persons assembled there who have seen Suresh lying over the road.

16. PW-7 is the Investigating Officer. During examination-in-chief, he had deposed that after having been entrusted with the investigation after registration of case, he recorded further statement of the informant, gone to the place of occurrence, inspected the place of occurrence. It happens to be village, Rampur where there happens to be a hand-pipe having boundary as North-Road, South-Transformer, East-Durga Asthan and West-barren land along with houses of different persons. He recorded further statement of the informant, statement of interested witness, accused, procured injury report and submitted charge-sheet. During cross-examination at para-2 he had admitted that he had not recorded statement of persons having houses by the side of the alleged place of occurrence. He had not found any sign of Maar-peet at the alleged place of occurrence. Injured had filed written report. He had further stated that dispute



arose over wages. The name of the labourer happens to be Shankardayal. PW-8 is formal who had simply exhibited endorsement over written report.

17. From the evidence as discussed hereinabove, it is apparent that there happens to be consistent version at the end of prosecution that there was single Garasa blow at the end of Shakar while Gopal had assaulted with Lathi. It is further evident that there happens to be conflicting version amongst the PWs with regard to activity of both the appellants during course of the occurrence. It is further evident that the doctor had found two incised injuries apart from third caused by hard and blunt substance. That means to say, presence of one injury caused by sharp cut weapon is found not at all explained. It is further evident that there happens to be admission at the end of the informant that wife of Gopal had instituted a case against him for outraging her modesty and the aforesaid case was still persisting. Prosecution had not declared PW-4 to be hostile who happens to be adverse to the prosecution case as had found Suresh coming out from the house of Gopal in a drunken condition having injury over his head while he along with Gopal and Shankar were coming from the field where they both were engaged by him as labourers to weed out his crops. In its continuity, when the evidence of the Investigating Officer has been gone through, it is apparent that



during course of inspection of the place of occurrence, he had not found blood stain over the same. The most crucial aspect is that from the evidence of the witnesses it is apparent that after assault the victim had fallen over the road, but was it a road ? There happens to be no boundary disclosed by any of the witnesses regarding the place of occurrence. They have simply stated that while Suresh was coming, Gopal and Shankar armed with Lathi and Garasa came, inflicted blow as a result of which Suresh fell down over the soiling road. When the examination-in-chief of the Investigating Officer (PW 7) has been gone through on that very score, he had identified the place of occurrence where there happens to be a hand-pipe. None of the witnesses had disclosed that there was a hand-pipe and further identified the boundary of the place of occurrence as North-Soiling Road, South-Transformer, East-Durga Asthan and West-barren land along with house of different persons.

18. So, now one has to see whether it suggests place of occurrence to be the road as disclosed by PW-8. Had there been, then in that event, in both the sides either north and south or east and west, there should have been presence of road. That means to say, it was away from the road. None of the witnesses was cross-examined nor they during examination-in-chief stated the location of the house of the appellants.



19. The third circumstance which found to be persisting on record is according to the doctor (PW 6), he had examined the injured at 9:00 PM on 29.08.2010 while according to the formal FIR, the written report was filed on 29.08.2010 at about 5:00 PM. None of the witnesses had claimed that injured was in full sense at that very moment rather, the evidence of the witnesses are that the informant after sustaining injury fell down, became senseless and he had taken him to the police station where he remained unconscious and then was taken to hospital as directed by the police officials where he regained sense, informant has contradicted the same.

20. In the aforesaid background there happens to be some sort of doubt over the conduct of the prosecution regarding authenticity of the version as propounded and the cumulative effect did not justify the finding recorded by the learned lower court whereupon, the judgment of conviction and sentence rendered by the learned lower court is set aside. Appeal is allowed.

21. Since appellants are on bail, they are discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

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